

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JAMES E. SYKES	§	
VS.	§	CIVIL ACTION NO. 9:18-CV-88
CECILIA C. OKOYE, ET AL.	§	

**ORDER OVERRULING DEFENDANT'S OBJECTIONS AND ACCEPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff James E. Sykes, a prisoner previously confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Cecilia C. Okoye, Mark Roberts, and Ruth E. Brouwer.

The Court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends denying the motion to dismiss filed by defendant Cecilia Okoye.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Defendant Okoye filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration of all the pleadings and the

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relevant case law, the court concludes that defendant Okoye's objections lack merit. Because defendant Okoye has not been served properly, it would be premature to address the merits of her motion to dismiss. Defendant Okoye also contends that the claims against her should be dismissed for insufficient service pursuant to Federal Rule of Civil Procedure 12(b)(5). Because plaintiff is proceeding *in forma pauperis*, the Court is responsible for serving the defendant. Therefore, at this time, the defendant's motion to dismiss for insufficient service of process should be denied. However, plaintiff must provide the Court with sufficient information to serve the defendant if he wishes to proceed with this action.

ORDER

Defendant Okoye's objections (document no. 97) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 96) is **ACCEPTED**. Defendant Okoye's motion to dismiss (document no. 56) is **DENIED**.

So ORDERED and SIGNED, Mar 24, 2021.



Ron Clark
Senior Judge